

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





DOCKET NO.

76-1257

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

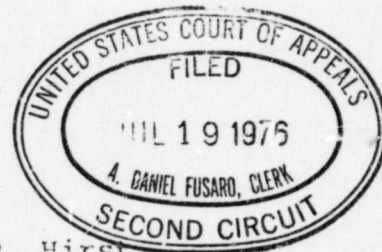
UNITED STATES OF AMERICA : APPELLEE  
V. :  
ROBERT L. COMPANION : APPELLANT

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Appeal from the United States District Court  
for the District of Vermont

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BRIEF FOR THE APPELLANT  
APPENDIX



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## TABLE OF CONTENTS

TABLE OF CITATIONS	i
STATEMENT OF ISSUE	ii
STATEMENT OF THE CASE	1
Preliminary Statement	1
Statement of Facts	2
Argument	5
Discussion	6
Conclusion	14
APPENDIX	16
Docket Entries	16
Order	19



## TABLE OF CITATIONS

### CASES

- GAGNON V. SCARPELLI, 411 U.S. 778 (1973)
- JONES V. JOHNSTON, 368 F.SUPP. 571 (D.D.C. 1974)
- MORRISSEY V. BREWER, 408 U.S. 471 (1972)
- ROBB V. NORTON, 394 F.SUPP. 856 (D.C. CONN. 1975)
- SUTHERLAND V. DISTRICT OF COLUMBIA BOARD OF PAROLE,  
366 F.SUPP. 270 (D.D.C. 1973)
- UNITED STATES EX REL BLASSINGAME V. GENGLER, 502  
F.2D 1388 (2ND CIR. 1974)
- UNITED STATES V. KENTON, 287 F2D 534 (2ND CIR. 1961)
- UNITED STATES EX REL HAHN V. REVIS, 520 F2D 632  
(7TH CIR. 1975)

### STATUTES

- 18 U.S.C. § 3653
- 18 U.S.C. § 4203(a)
- 18 U.S.C. § 4206

### MISCELLANEOUS

- ABA STANDARDS RELATING TO PROBATION, PART V, § 5.1

STATEMENT OF ISSUE

THE ISSUE IS WHETHER THE DISTRICT COURT WAS IN ERROR IN  
DENYING DEFENDANT COMPANION'S MOTION TO DISMISS THE  
GOVERNMENT'S PETITION FOR REVOCATION OF PROBATION.



IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA : APPELLEE  
V. :  
ROBERT L. COMPANION : APPELLANT

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BRIEF FOR THE APPELLANT

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STATEMENT OF THE CASE

PRELIMINARY STATEMENT

Robert L. Companion appeals the order of the United States District Court, the Honorable James S. Holden, Chief United States District Judge for the District of Vermont, presiding, entered on May 12, 1976, and followed by an opinion entered on May 13, 1976. Judge Holden's order denied Mr. Companion's motion to dismiss the Government's petition

for revocation of probation. Judge Holden had placed Mr. Companion on probation on May 30, 1975, after he entered a plea of nolo contendere to one count of an indictment charging him with interstate transportation of counterfeit securities, in violation of 18 U.S.C. § 2314. Three conditions of Mr. Companion's probation required that he restrict his travel to Vermont and New Hampshire; that he file written reports monthly with his probation officer; and that he notify his probation officer of any change of address. On January 30, 1976, he was arrested in Arizona for violation of these conditions. The basis of Mr. Companion's motion to dismiss was the delay by the Government of three months both in returning him to the District having jurisdiction over him, and in providing him with a hearing before a judicial officer, during which period the Government held him in jail without any judicial authorization.

#### STATEMENT OF FACTS

On January 30, 1976, Robert Companion was arrested at a private rehabilitation facility near Tucson, Arizona, by agents of the Federal Bureau of Investigation for violation of probation. [T 13]\* Mr. Companion has a history of alcoholism, as do other members of his family, including his mother. [T 9 - T 10] In Arizona he was undergoing treatment for his alcoholism at a rehabilitation facility operated by a religious group, the Lost and Found Ministry. [T 12]. At ten o'clock on the

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\* T refers to the transcript of the hearing held May 3, 1976.



morning he was arrested, Mr. Companion was told that FBI agents had visited the facility earlier that morning with a warrant for his arrest. [T 13] Mr. Companion showered, cleaned up, and waited for them to arrive. [T 13] He was arrested at one p.m. [T 13].

Following his arrest, the Government did not bring Mr. Companion before a judicial official until May 3, 1976, when he was brought before the Honorable James S. Holden, in the United States District Court at Rutland, Vermont. [T 15] Upon his arrest, Mr. Companion was taken to Pima County Jail, where he was held for fourteen days. [T 15] He was then taken to the Florence Detention Center, in Florence Arizona, where he was held for another fourteen days. [T 15] Next, he was transported by bus to the El Paso County Jail in El Paso, Texas, where he was held for five days. [T 16] Next, after an overnight stay in the Odessa, Texas, County Jail, he was transferred to the federal facility in El Reno, Oklahoma, where he was held for approximately five days. [T 16] Next, he was transported to the Leavenworth Penitentiary in Leavenworth, Kansas, where he was held for about fourteen days. [T 16] Then he was moved to the Marion Federal Penitentiary in Marion, Illinois, for an overnight stay, and then moved to the Federal Penitentiary in Terre Haute, Indiana, where he remained for approximately fourteen days. [T 17] He was next transported to Lewisburg, Pennsylvania, where he was held overnight in the County Jail

and then moved to the Federal Penitentiary the next morning.

[T 17] After a day in Lewisburg, Mr. Companion was taken to the Metropolitan Correctional Center in New York City.

[T 17] He was incarcerated in the Metropolitan Correctional Center from April 2 to April 28. [T 17] On April 28, he was transported to Vermont. [T 18] In the course of these incarcerations, all Mr. Companion's personal effects, including clothes, Bibles, and \$8.10, were taken from him by prison personnel and lost. [T 16 - T 18]



ARGUMENT

1. THE GOVERNMENT FAILED TO COMPLY WITH 18 U.S.C. § 3653, WHICH REQUIRES THAT, "AS SPEEDILY AS POSSIBLE AFTER ARREST, THE PROBATIONER SHALL BE TAKEN BEFORE THE COURT FOR THE DISTRICT HAVING JURISDICTION OVER HIM."

2. THE GOVERNMENT FAILED TO COMPLY WITH GAGNON V. SCARPELLI, 411 U.S. 778, (1973), WHICH REQUIRES THAT A PERSON ARRESTED FOR PROBATION VIOLATION BE GIVEN A PRELIMINARY HEARING AT OR NEAR THE PLACE AND TIME OF ARREST.

3. IN INCARCERATING THE APPELLANT FOR THREE MONTHS BEFORE BRINGING HIM BEFORE A JUDICIAL OFFICER, THE GOVERNMENT DEPRIVED THE APPELLANT OF HIS RIGHT NOT TO BE INCARCERATED EXCEPT BY JUDICIAL ACTION, AND DEPRIVED THE DISTRICT COURT OF SENTENCING PREROGATIVES.

4. ASSUMING, ARGUENDO, THAT A PROBATION VIOLATOR MUST SHOW PREJUDICE IN ORDER FOR A VIOLATION PETITION TO BE DISMISSED BY REASON OF DELAY, THE APPELLANT WAS PREJUDICED BY BEING INCARCERATED FOR THREE MONTHS WITHOUT JUDICIAL OR STATUTORY AUTHORIZATION. THUS THE DISTRICT COURT SHOULD HAVE DISMISSED THE PETITION.

5. EVEN WITHOUT A SHOWING OF PREJUDICE, THE DISTRICT COURT SHOULD HAVE DISMISSED THE PETITION TO ENFORCE GOVERNMENT ADHERENCE TO THE REQUIREMENTS OF 18 U.S.C. § 3653 AND TO GAGNON V. SCARPELLI, SUPRA, AND TO PROTECT THE JUDICIAL SENTENCING FUNCTION.

DISCUSSION:

Mr. Companion was arrested in Arizona on January 30, 1976, and first appeared before a judicial official on May 3, 1976, in Vermont. In the intervening three months he was incarcerated in twelve different jails as he was moved east by the Government. In allowing three months to elapse between Mr. Companion's arrest in Arizona and his initial appearance in Vermont, the Government failed to comply with 18 U.S.C. § 3653, governing the revocation of probation, which requires that, "as speedily as possible after arrest, the probationer shall be taken before the court of the district having jurisdiction over him."

The district having jurisdiction over Mr. Companion is the district of Vermont. The Government concedes that it did not transport Mr. Companion to that district as speedily as possible. He was moved across the country by a circuitous route, which included stays of various lengths in twelve different penal institutions. He was incarcerated in New York City, only a short distance from the District of Vermont, for a period of twenty-six days. He did not arrive in the District of Vermont until April 28, 1976, some eighty-seven days following his arrest.

Counsel for the Government at the May 3 hearing, in response to the Court's questions concerning what is meant by the phrase, "as speedily as possible," conceded that Mr. Companion was not brought before the Court as speedily as



possible:

THE COURT: Well I don't think it means ninety days, do you?

MR. NEIDERMEIER: Certainly, Your Honor, I would think that "as speedily as possible" does not mean that. [T 24]

Later Mr. Neidermeier stated:

MR. NEIDERMEIER: The probationer has been brought, albeit, not as speedily as possible, perhaps, but to the forum in which the witnesses are, in which the sources are fresh, and in which he was sentenced and I believe that the Court has information regarding his violation. [T 25]

In its opinion of May 13, the District Court, while attributing some of the delay to the Defendant's voluntary presence in Arizona, found that the Government had failed to transport the defendant to the District of Vermont as speedily as possible:

While the Government has failed to bring the defendant before this court "as speedily as possible" within the provisions of 18 U.S.C. § 3653, some of the delay is attributable to the excessive distance that the probationer traveled from this District in violation of the conditions of his probation. [Opinion, Page 2]

In addition to its failure to comply with 18 U.S.C. § 3653, the Government failed to observe the requirement of Gagnon v. Scarpelli, 411 U.S. 778 (1973), that an arrested probationer be given a preliminary hearing at or near the

place and time of arrest. The Court stated at 782:

Accordingly, we hold that a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in Morrissey.

In Morrissey (Morrissey v. Brewer, 408 U.S. 471 [1972]), the Court described the prerequisites of the preliminary hearing as follows:

The first stage in the process of parole revocations occurs when the parolee is arrested and detained, usually at the discretion of his parole officer. ...There is typically a substantial time lag between the arrest and the eventual determination by the Parole Board whether the parole should be revoked. Additionally, it may be that the parolee is arrested at a place distant from the state institution, to which he may be returned before the final decision is made concerning revocation. Given these factors, due process would seem to require that some minimal inquiry be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest while information is fresh and sources are available. Such an inquiry should be seen as in the nature of a "preliminary hearing" to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. [408 U.S. at 485]

The reasons for granting a probationer a preliminary hearing at the place and time of arrest are numerous. First, a preliminary examination would determine whether the right person had in fact been arrested. Second, such a hearing would determine whether probable cause exists to hold the probationer in custody. Third, where it is necessary to transport an arrested probationer to another district, the hearing officer



is in a position to enter an order assuring that this be done "as speedily as possible," in compliance with 18 U.S.C. § 3653. The Government's failure to afford Mr. Companion a preliminary hearing as required by Gagnon and Morrissey means that the Government has simply ignored the Supreme Court's attempt through Morrissey and Gagnon to secure these interests.

The Government held Mr. Companion in custody for three months before bringing him before a judicial officer. Mr. Companion's confinement was utterly without judicial authorization. In incarcerating Mr. Companion for three months without process, the Government deprived the District Court of its discretion to impose a sentence less severe than three months in jail. By its actions, the Government assumed the Court's sentencing function.

The question is whether dismissal of the petition is the appropriate remedy. While judicial attention has not been abundantly directed toward the situation of the probation violator, several circuits have examined the effect upon the parole violator of unreasonable delay in affording him a preliminary hearing.

The rule in the Second Circuit appears to be that where an unreasonable delay occurs prior to the holding of a parole revocation hearing, the revocation action will be quashed only if the petitioner demonstrates actual prejudice resulting from the delay. In Robb v. Norton, 394 F.Supp. 856, 858 (D. Conn. 1975), the Court found that unreasonable delay had occurred

prior to the holding of a parole revocation hearing. After making that finding, Judge Zampano wrote, "...the Petitioner urges that the detainer and the underlying violations warrant must be quashed...To merit this relief the Petitioner must demonstrate actual prejudice resulting from the unreasonable delay in holding a parole revocation hearing." This position is not inconsistent with the decisions of this Court. In United States ex rel Blassingame v. Gengler, 502 F.2d 1388 (2d Cir. 1974), the Court, in a brief per curiam opinion, reaffirmed United States v. Kenton 287 F.2d 534 (2d Cir. 1961). In Kenton, which was decided prior to the Morrissey extension of due process safeguards to parole revocation proceedings, the Court held that dismissal was not an appropriate remedy for the Government's unreasonable delay in providing a parole revocation hearing, where the petitioner was not prejudiced by the delay. In neither Kenton nor Blassingame did the petitioner make a showing of prejudice. It should be noted that in other circuits, unjustified delay may in and of itself provide justification for dismissing a parole revocation proceeding. The Seventh Circuit in effect dismissed such a proceeding in United States ex rel Hahn v. Revis, 520 F.2d 632 (7th Cir. 1975), where it concluded that an unjustified delay in providing a parole revocation hearing required the issuance of a writ of habeas corpus and made a further stipulation that in effect dismissed the petition:

In view of the unjustifiable delay, we do not think it appropriate to order a revocation



hearing at this time. To order anything less would be to provide the petitioner a right without a remedy..." [520 F.2d 639]

Similarly, the District Court for the District of Columbia has dismissed warrants for parole violation apparently without a show of prejudice. See Sutherland v. District of Columbia Board of Parole, 366 F.Supp. 270 (D.D.C. 1973) (five months' delay); Jones v. Johnston, 368 F.Supp. 571 (D.D.C. 1974) (three years' delay).

Certain parallels exist between the situation of the parole violator and probation violator. However, as we point out below, there are important distinctions as well. It is our position that these distinctions are important enough to require the Court to judge the Government's actions by a stricter standard in probation cases than in parole cases, to determine whether delay by the Government should result in dismissal. Assuming, arguendo, that the same standards apply in both categories, it is our position that Mr. Companion was sufficiently prejudiced by the delay in this case to require dismissal of the petition.

It was by no means inevitable that Mr. Companion's violation of probation would result in a sentence as severe as three months incarceration. First, the statute governing the resentencing of probation violators, 18 U.S.C. 3653, provides that where a probationer undergoes revocation, the Court may, "require him to serve the sentence imposed or any lesser sentence..." (emphasis added). Second, The American Bar Association's

Standards Relating to Probation, Part V, §5.1, provide a recommendation that probation violation not be followed by incarceration except under certain specific conditions, with minimal application to this case. That recommendation provides that violation of a condition of probation is a necessary and sufficient ground for revocation of probation, but revocation followed by imprisonment should not be the disposition unless imprisonment is necessary to protect the public; to provide the offender with correctional treatment which can most effectively be provided in jail; or unless it would unduly deprecate the seriousness of the violation if confinement were not ordered. The recommendation suggests that as an alternative to confinement, the court review the conditions of the probation, ordering changes to be made where necessary.

The Government's actions foreclosed the possibility that Mr. Companion would receive a sentence of less than ninety days and effectively imposed a sentence of three months upon him without process. Certainly this is prejudice. The violation in this case was not on the order of seriousness of, for example, a criminal act committed while on probation. In view of that fact and the other circumstances of the case, such as Mr. Companion's desire to seek treatment for his alcoholism, it was distinctly possible upon arrest that a lesser sentence than ninety days, or no confinement at all, would be imposed. Indeed, at the time of his arrest, Mr. Companion was



receiving rehabilitative treatment effectively, which treatment was terminated by his incarceration. The nature of the incarceration -- twelve jails in three months -- made continuation of treatment impossible. The Government's actions foreclosed the possibility of a lesser sentence and foreclosed the possibility of an immediate continuation of treatment, and therefore deprived the Court of part of its sentencing function.

This impact on the sentencing process points to the difference in legal status between the probationer and the parolee. The parolee remains in the custody of the Attorney General while he is on parole [18 U.S.C. 4203(a)]. Upon the execution of a warrant for parole violation, the parolee must be returned to the custody of the Attorney General [18 U.S.C. § 4206]. No judicial action is required.

Such is not the case with the probationer. The probationer is not in the custody of the Attorney General. Upon violation of the terms of his probation, he will only be incarcerated if the court decides after hearing, that incarceration is the appropriate alternative [18 U.S.C. § 3653]. There is no expectation that the original sentence imposed and suspended will be imposed [Id.]. Rather, as indicated above, the enlightened practice is to review and alter the conditions of probation unless the court feels it must incarcerate the defendant to protect the public, to allow him to receive treatment, or to deter other probationers from violating their probation.

It follows that different standards should be applied to probationers and parolees in determining whether revocation

petitions should be dismissed when the Government delays in holding revocation proceedings. In the case of the probationer, delay deprives the probationer of access to the Courts, to which he is entitled by statute. The longer the delay, the greater the deprivation. No such deprivation is experienced by the parolee as he has no such right. The commitment of the parole violator to the custody of the Attorney General is automatic.

#### CONCLUSION

The Court of Appeals should reverse the District Court's denial of the defendant's motion to dismiss for the following reasons:

1. The Government's actions prejudiced Mr. Companion in the most fundamental of ways. The Government imposed upon him a prejudgment sentence of three months' incarceration. No judicial or statutory authorization preceded this incarceration. The incarceration was imposed without the prior judgment of any court or judicial official. Mr. Companion was prejudiced in that he was prejudged. Prejudice of the magnitude which he experienced -- three months in twelve different jails -- can only be redressed by a dismissal of the probation revocation petition.

2. Dismissal of the petition is necessary to prevent future actions by the Government, in similar circumstances, disregarding the requirements of 18 U.S.C. § 3653 and Gagnon v. Scarpelli, supra, and assuming judicial sentencing prerogatives.




Dismissal is also the only reasonable means of redressing Mr. Companion's grievances. The Government's actions in this case violated the requirement of 18 U.S.C. § 3653 that an arrested probationer be transported as speedily as possible to the district having jurisdiction over him. The Government's actions violated the mandate of Gagnon v. Scarpelli, supra, that a person arrested for violation of probation be granted a preliminary hearing at or near the place and time of arrest. And the Government's actions deprived the District Court of substantial discretion in sentencing Mr. Companion. If the Court of Appeals does not reverse the District Court's decision, Mr. Companion's rights will have been abridged, but no remedy will be available to him. Dismissal of the petition is Mr. Companion's only realistic remedy. As the Seventh Circuit stated in United States ex rel Hahn v. Revis, supra, "to order anything less would be to provide petitioner a right without a remedy." And to require anything less would be to encourage the Government to disregard the directives of the Supreme Court, the directives of Congress, and the prerogatives of the sentencing court.

Dated at Burlington, Vermont, this 16th day of July, 1976.

ROBERT L. COMPANION

BY:



Richard B. Hirst  
A Member of the firm of  
VILLA & HIRST

-16-

D. C. Form No. 100 Rev.

[illegible]

DATE	PROCEEDINGS
1975	
Apr. 18	Filed Indictment for violation of Section 2314, Title 18, USC(Rule 20).
" "	" Consent to transfer of case for plea and sentence under Rule 20.
" "	" Financial Affidavit.
" "	" Appointment of Richard B. Hirst, Esq. for defendant.
" "	" Petition to enter plea of Nolo Contendere and Order entering plea.
" 18	In open Court before Judge Holden, defendant present with his attorney, Richard B. Hirst, Esq. for arraignment under Rule 20. David A. Reed, Esq. for Government.
" "	Court makes inquiries of defendant.
" "	Defendant was arraigned and entered a plea of Nolo Contendere as to Count I; not guilty as to Counts II & III.
" "	Court makes further inquiries of defendant.
" "	Statements made to Court by Mr. Reed.
" "	Ordered: that plea of Nolo Contendere as to Count I is accepted by the Court; that presentence investigation be made.
" "	Mr. Hirst moves to remove detainer on Bond of \$ 5,000.00(\$500 cash) in Arizona.
" "	Ordered: conditions of release is continued in this case but



DATE 1975	PROCEEDINGS	
Apr. 18	may be modified after April 22, 1975; counsel to file Stipulation. Defendant to keep in contact with his attorney on or before Friday of each week.	✓
" 21	Filed Warrant for Arrest of Defendant returned served.	6. ✓
" 28	" Superseding Indictment; Motion and Order to Transfer Bond; Appearance Bond in amount of \$5,000 with 10% deposit; and Order Specifying Methods and Conditions of Release.	7. ✓
May 30	In Court before Judge Holden. David Reed, Esq. for Govt; Richard B. Hirst, Esq. for Deft. Deft. present in Court with his atty.	
" "	Court makes inquiry of Deft's Attorney and of Deft. before sentence.	
" "	Statements made to Court by Mr. Hirst re mitigation of sentence; following by Deft.	
" "	Filed Judgment--Imposition of sentence suspended and Deft. placed on probation for 2 years under T 18, §3651, U.S.C	8. ✓
" "	Mr. Reed for Govt. moves to dismiss Counts II & III of Indictment.	
" "	ORDERED: Motion granted. Counts II & III dismissed.	
July 7	Filed Authorization for Distribution of available private funds.	9. ✓
Dec. 12	" Probation Officer's Request for Issuance of Bench Warrant and Court order thereon.	10. ✓
" 1976	Issued Warrant for Arrest of Probationer.	
May 3	In open Court before Judge Holder. Jerome Niedermeier, Asst. U.S. Attorney. Richard B. Hirst, Esq., Attorney for Defendant.	
" "	Defendant Companion present in Court with his Attorney Richard B. Hirst, Esq., for hearing on revocation of probation and on Motion to Dismiss.	
" "	Hearing on Revocation of Probation.	
" "	Donald E. Allard, sworn by Clerk, was examined for the Government.	
" "	Hearing on Motion to Dismiss.	
" "	Statements made to Court by Mr. Hirst, followed by Mr. Niedermeier; further followed by Mr. Hirst.	
" "	Decision reserved awaiting further information from Government. Cause continued to May 11, 1976.	
" 10	Filed Response of United States to Defendant's Motion to Dismiss.	11. ✓
" "	" Defendant's Supplemental Memorandum of Law.	12. ✓
" 11	Filed Defendant's Second Supplemental Memorandum of Law.	13. ✓
" 12	In open Court before Judge Holden. Jerome Niedermeier, Asst. U. S. Atty; Richard B. Hirst, ESq., Attorney for Defendant Companion.	
" "	Defendant Companion present in Court with his Attorney, Richard B. Hirst, ESq., for further hearing on revocation of probation and Defendant's Motion to Dismiss.	
" "	Statements made to Court by Mr. Niedermeier re: length of time for transporting Defendant to Vermont, in regard to probation revocation.	
" "	Statements made to Court by Mr. Picher, U. S. Probation Officer.	
" "	Court makes inquiry of Counsel.	
" "	Statements made to Court by Mr. Hirst re: revocation of probation and dismissal; followed by Mr. Niedermeier.	
" "	ORDERED: Motion to dismiss Denied.	
" "	Statements made to Court by Mr. Hirst re: mitigation of sentence; followed by Mr. Companion.	
" = 13	Filed Order - - The defendant's probation is revoked and he is committed to the custody of the Attorney General of the United States for the period of one (1) year.	14. ✓

OVER





UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

United States of America	*	
v.	*	Criminal Action
Robert L. Companion	*	File No. 75-30

ORDER

On May 30, 1975, following the defendant's plea of guilty to Count I of the Indictment to a violation of 18 U.S.C. § 3214, the Court found the defendant to be a Young Adult Offender, but one who would not benefit from treatment under the provision of the Youth Correction Act. Imposition of sentence was suspended and the defendant was placed on probation for a period of two years.

Upon application of the Chief U.S. Probation Officer, a warrant for the arrest of the defendant was issued from this Court as the last Court having supervision of the probationer for alleged violation of provisions 4, 5 and 7 of the general conditions of the probation.

The defendant was arrested in Arizona on January 30, 1976. After the United States District Court for the District of Arizona declined to accept jurisdiction, the defendant was assigned to the Prisoner Coordination Section for transportation to this district. After considerable delay in transit, the defendant was brought before this Court for hearing, on

May 3, 1976, of the alleged violation of the terms of his probation.

The defendant appeared in person and by assigned counsel. Upon consideration of the evidence presented, the Court finds that the defendant had violated the condition of his probation in leaving the judicial district of the Court having jurisdiction over him in August, 1975; that he willfully failed to notify the probation officer of this district of his change in residence and that he failed to submit written monthly reports to the Chief United States Probation Officer for the period from July, 1975.

The hearing was adjourned from May 3, 1976, to May 12, 1976, to afford the Government an opportunity to answer the defendant's motion to dismiss the warrant for probationer's arrest on the ground of excessive delay. While the Government has failed to bring the defendant before this Court "as speedily as possible" within the provisions of 18 U.S.C. § 3653, some of the delay is attributable to the excessive distance that the probationer traveled from this district in violation of the conditions of his probation.

Upon consideration of oral and written arguments of counsel and statements presented to the Court, the motion to dismiss was denied for reasons stated on the record. Being satisfied that the defendant has abused the opportunity afforded him to avoid incarceration and that the defendant's continued probation will undermine the alternative of probation and the



seriousness of the offense for which he has been convicted,  
it is ORDERED:

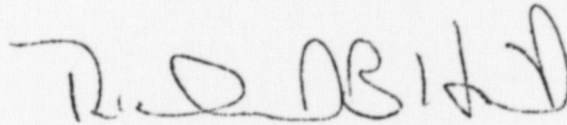
The defendant's probation is revoked and he is committed  
to the custody of the Attorney General of the United States  
for the period of one (1) year.

Dated at Rutland, in the District of Vermont, this 13th  
day of May, 1976.

S/JAMES S. HOLDEN  
\_\_\_\_\_  
CHIEF JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of July,  
1976, mailed two copies of the attached Brief of Appellant  
and Appendix to Jerome J. Niedermeier, Assistant U.S.  
Attorney, Post Office Building, Rutland, Vermont 05701.

A handwritten signature in dark ink, appearing to read 'R. B. Hirst', written over a horizontal line.

Richard B. Hirst  
Attorney for Appellant